IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6545 OF 2005

ALONGWITH

WRIT PETITION NO. 6546 OF 2005

Virupaksha Ramchandra Burase .... Petitioner

versus

Prabhavati Madhukar Shinde & ors. ... Respondents.

Shri Ashok J. Chaugule for the petitioner
Shri R.V. More for the Respondents.

CORAM; P.V. KAKADE, J.

DATED; FEBRUARY 13, 2006.

P.C:

1. Heard both the sides.

2. Both the above petitions are conveniently be disposed of by this order as those are interlinked in respect of the issues involved.

3. The petitioner has preferred this petition against the judgment and order passed by the Additional District Judge, Sangli dated 11-02-2005 dismissing the appeal and confirming the judgment and order passed by

the trial court dated 6-4-2000 decreeing the suit under the provisions of the Bombay Rent Act for eviction of the defendants from the suit property on the ground that the petitioner had illegally subletting the suit premises and also that it was required by the plaintiff for his bonafide requirement for starting business.

4. The plaintiff is the owner of the suit property which was previously were in CTS NO. 56 and 56/1 admeasuring 19 x 30 ft.which was let out to defendant no.1 as per the agreement dated 10-1-1968 between Madhukar Dhondiram Shinde and his brother on one side and the defendant on the other side. Thereafter defendant no.1 became statutory tenant and standard rent was also fixed to the premises. Due to mutual partition between the original plaintiff and his brother Maruti Shinde, 50% of the share of the suit property went to the share of deceased Madhukar Shinde and 50% went to the share of his brother Maruti Shinde. Thus it was interalia alleged by the plaintiff that the suit premises was subletted illegaly to the defendant no.3, which was required for his own use and occupation for his bonafide requirement to start business therein. On this ground, the plaintiff gave notice on 15-2-1988 which was replied by the defendant no.1 but did not vacate the suit premises and therefore suit was filed.

5. The trial Judge adjudicated the dispute and came to the conclusion that it was proved by the plaintiff that the suit premises was unlawfully subletted to defendant no.3. It was further held that the plaintiff has proved her bonafide requirement for possession of the suit property and as such it was further held that greater hardship would be caused to the plaintiff if the decree was refused than granting decree to the defendants.

6. An appeal was filed before the District Court against the order of the trial court and after hearing the concerned parties and perusal of the finding recorded by the trial court, the appellate court dismissed the appeal and hence the present petition. At the outset it may be noted that so far as the issue of illegal sublet is concerned, it was defendant no.3 who was the alleged sub tenant and who has filed his written submission merely admitting that he has occupied the suit premises for transport business and was paying rent of Rs. 500/- to the defendant no.1 as agsinst the defendant no.1 came with a case that defendent no.3 was his servant. Further there is no oral and documentary evidence to show that the defendant no.3 was his servant. On this ground both the courts below came to the conclusion on the basis of available evidence that the subletting to defendant

no.3 is proved and decree has been passed. I do not see any reason to interfere with such finding.

7. Similarly the ground of bonafide requirement for personal use and occupation is concerned, both the courts below are of the view that the plaintiff is a widow and is willing to start her business in the property after the death of her husband. On the other hand the evidence on record shows that the defendant no.1 is an old person and had subletted the property to others and also the wife of defendant no.1 is running a shop at Sangli which fact is proved on record and therefore if the decree is refused for recovery of possession, then the plaintiff will suffer greater hardship than the defendant if decree is refused to the plaintiff. Both the courts below have concurred in recording the finding in that manner, which I do not see any reason to disturb.

8. In the result, the reasoning adopted by the courts below appears to be just legal and proper and there is no perversity in appreciating the evidence on record and as such there is no case for interference with the orders passed by both the cours below.

9. In the result, the petition stands dismissed with no order as to costs.

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